



GARY TSIRELMAN P.C.

ATTORNEYS & COUNSELORS AT LAW

129 LIVINGSTON STREET
SECOND & THIRD FLOORS
BROOKLYN, NY 11201
T: (718) 438-1200 • F: (718) 438-8883
nbowers@gtmdjd.com

April 29, 2021

The Honorable Roslynn R. Mauskopf
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: Capital 7 Funding v. Wingfield Capital Corp., et al., Case # 1:17-cv-2374-RRM-ST; Letter Regarding Defendants' Late Papers

Dear Judge Mauskopf:

We write on behalf of Plaintiff Capital 7 Funding ("Capital 7") to inform the Court that Defendants Joseph Rabito, Damian Laltie (the "Bibb Defendants") served late response papers to Plaintiff's opposition to their motion to vacate the entries of default and cross motion for default judgment and that Burgis Sethna, Heath Wagenheim, and Wingfield Capital Corporation (the "Metcalf Defendants") have not yet served any such response papers to the same opposition and cross motion and to request that the Court reject any attempt by Defendants to file late response papers. Plaintiff also requests an extension of its time to file its reply papers should the Court accept the Bibb Defendants' late papers.

The Court adopted the following briefing schedule for Defendants' motions to vacate the entries of default and for Plaintiff's cross-motion for default judgment by Order dated February 3, 2021:

- a. Plaintiff's opposition to Defendants' motions and Plaintiff's cross-motion for default judgment was due served March 12, 2021;
- b. Defendants' reply and opposition to default judgment was due served April 9, 2021;
- c. Plaintiffs' reply is due served April 30, 2021.

Plaintiff served its opposition by mail on March 12, 2021, and emailed courtesy electronic copies to Defendants' counsel the same evening. Plaintiff included courtesy physical copies for submission to chambers per Your Honor's Individual Rule II.B.6. Plaintiff's counsel received no requests from Defendants for any enlargement of the briefing schedule. In fact, Plaintiff's counsel received no subsequent communications from Defendants' counsel until April 27, 2021.

On April 26, 2021, the undersigned called and emailed Defendants' counsel's offices to determine if responsive papers had been served. Plaintiff received no

response from any Defendant until April 27, 2021, when counsel for the Bibb Defendants emailed reply and opposition papers dated January 23, 2021, alongside two notarized affidavits dated April 15, 2021. The papers were clearly completed and served well after the date the parties agreed upon and the Court ordered. Counsel for the Bibb Defendants provided no explanation beyond stating that he was recovering from surgery. The Bibb Defendants did not request any retroactive extension of the briefing schedule nor did they offer an extension for Plaintiff's time to file a reply.

The Metcalf Defendants have not responded in any way to Plaintiff's cross-motion or to the voicemail and email message the undersigned left with counsel.

Plaintiff requests that the Court reject the late papers from the Bibb Defendants. Should the Court extend the Bibb Defendants' time to respond *sua sponte* and accept their late papers, Plaintiff requests an extension of ten days, from April 30 to May 10, 2021, for Plaintiff to submit its reply. Plaintiff has not conferred with Defendants regarding such an extension because the Court has not extended Defendants' time to respond. The extension would not affect any other currently scheduled dates.

Plaintiffs also request that the Court reject any papers the Metcalf Defendants may seek to file in response to Plaintiff's motion for default judgment as late because they have not been served upon Plaintiff.

Plaintiff also asks that the Court modify or waive the requirement of the Order adopting the briefing schedule dated February 3, 2021, and Your Honor's Individual Rule II.B.5 that the original movants, here the Defendants, file the fully-briefed motions and instead allow Plaintiff to electronically file the fully-briefed motion papers with the Court. Plaintiff makes this request because it is concerned that Defendants' pattern of dilatory behavior will extend to filing the full sets of papers and further delay resolution of the pending motions. Plaintiff is also willing to provide Your Honor with the required courtesy copies under Your Honor's Individual Rule II.B.6.

Thank you for your consideration of this letter.

Respectfully,

/s/
Nicholas Bowers, Esq.
Counsel for Plaintiff
Gary Tsirelman P.C.
129 Livingston, 2nd Floor
Brooklyn NY 11201

cc: All counsel via ECF